IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO. 868 OF 2004

Messrs Vithal Tulsidas Choksi ..Petitioner.

vs.

Shreeji Jewellery Ltd. .. Respondents.

Shri S. Purohit i/by Kanga & Co.

for petitioner.

Shri B.B. Saraf i/by Kiran Jain & Co.

for the company.

CORAM : S.U.KAMDAR, J.

DATE : 8th APRIL, 2005

P.C.

. The claim in the present petition is for Rs. 3,41,867/- It is the case of the petitioner that the said amount is due and payable in respect of the services rendered by the petitioner for procurement of purchase orders for the respondent company and in respect of which he is entitled to commission. According to the petitioner they have issued debit note for the said amount. However, the company denies the receipt of any such debit note. It is an admitted position that the company has made payment of Rs. 1,78,07,192/- during the period 1.4.2000 to

31.3.2004 to the petitioner. According to the petitioner the said payment is towards commission charges. Statutory notice was given on 19.8.2004. In reply to the statutory notice the respondent company vide its letter dated 11.10.2004 denied its liability to pay the said amount. It was also contended that the petitioner has obtained the said payment wrongfully and by misrepresentation. According to the company the said payment was not payable to the petitioners at all. However, though the company made some claim in the notice for alleged misuse of the company's credit card they did not demand refund of any such payment allegedly received by the petitioner wrongfully and by misrepresentation. In the aforesaid circumstances, the present petition was filed for the recovery of the aforesaid amount. In reply to the company petition an affidavit has been filed and the case now put forward is contrary to the said reply to the notice. It has been contended in paragraph 6 of the said petition that Rs. 1,78,07,192/- was paid not wrongfully but for the services rendered by the petitioners. No details are given of what services other than what petitioner claim in the petition was rendered and what amount is payable under which service and under which contract. In the aforesaid circumstances, I will have to accept the case of the petitioner that they have rendered services of procuring purchase orders and they are entitled to

the commission. It is also thus clear that the company has made part payment towards the said services but now denies any such contract.

2. In the circumstances aforesaid, I pass the following order :-

3. The respondent company is directed to deposit a sum of Rs. 1 lac in this Court within a period of two weeks from today. On such deposit being made the petition to stand dismissed. The petitioner will be at liberty to file a suit within four weeks from the date of communication of such a letter from the advocate of the respondent company of deposit being made. If such a suit is filed the amount to stand transferred to the credit of the suit and the same to be invested in a fixed deposit with any nationalised bank initially for a period of three years and to be renewed thereafter from time to time till further orders from the Court.

4. If the amount is not so deposited within the period stipulated the company petition to stand admitted and advertised. The petitioner to deposit with the Prothonotary and Senior Master a sum of Rs. 2000/- within a period of one week from today.

5. The admission of the petition to be

advertised in two newspapers namely, Free Press Journal and Navshakti and Government Gazette. On the failure of the petitioner to advertise the said petition, office is directed to advertise the same by utilising the amount deposited.

6. In an event if the amount is deposited and suit is filed by the petitioner within the period stipulated hereinabove, the respondent company will be entitled to withdraw the said amount. If such amount is deposited as aforesaid, the petition to stand dismissed.